



LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Attorney General
1275 WEST WASHINGTON
Phoenix, Arizona 85007

Robert R. Carbin

May 4, 1984

The Honorable David C. Bartlett
Arizona State Representative
House Wing, State Capitol
1700 West Washington
Phoenix, AZ 85007

Re: I84- 065 (R84-045)

Dear Representative Bartlett:

You have asked whether Article IV, Part 2, Section 4 ("Section 4") of the Arizona Constitution prohibits university library personnel from becoming state legislators.¹ Section 4 provides, with certain exceptions, that a public officer of Arizona or of the United States may not be a member of the Arizona Legislature.² Section 4 does not actually prohibit a public officer from becoming a legislator; Section 4 merely prohibits a public officer from simultaneously serving in the legislature. Thus, we have rephrased your question to determine whether a university library employee is a "public officer" as that term is used in Section 4 and is thereby prohibited from being employed in that capacity while serving in the legislature.

1. Your opinion request did not specify whether you were referring to any university or only state universities. For purposes of this opinion, we will assume you are referring to state universities.

2. Specifically, Section 4 provides:

No person holding any public office of profit or trust under the authority of the United States, or of this State, shall be a member of the Legislature; Provided, that appointments in the State militia and the offices of notary public, justice of the peace, United States commissioner, and postmaster of the fourth class, shall not work disqualification for membership within the meaning of this section.

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As we noted in Ariz. Atty. Gen. Op. 184-041, neither the courts nor the legislature have provided a definition of "public officer" as it is used in Section 4. However, in other contexts, "public officer" requires that the specific position is created by law, certain definite duties are imposed by law, and the duties involve some portion of the sovereign power. See Tomaris v. State, 71 Ariz. 147, 224 P.2d 209 (1950); Industrial Commission of Arizona v. Arizona State Highway Commission, 61 Ariz. 59, 145 P.2d 846 (1944); Stapleton v. Frohmiller, 53 Ariz. 11, 85 P.2d 49 (1938). We believe that these requirements apply to public officers as that term is used in Section 4. Since the position and duties of library personnel do not customarily satisfy this three-pronged test, we believe that university library personnel are not public officers within the prohibitions of Section 4.

We note, however, that another section of the Arizona Constitution is applicable to your question. Ariz. Const., Art. IV, Pt. 2, § 5 ("Section 5"), provides:

No member of the Legislature, during the term for which he shall have been elected or appointed shall be eligible to hold any other office or be otherwise employed by the State of Arizona or, any county or incorporated city or town thereof. This prohibition shall not extend to the office of school trustee, nor to employment as a teacher or instructor in the public school system.

Thus, a legislator may not be employed by a state university unless he is employed as a teacher or instructor. We have previously opined that teachers or instructors at institutions of higher education are those employed "primarily to impart knowledge to the students enrolled in the institution." Ariz. Atty. Gen. Op. 73-4; accord Ariz. Atty. Gen. Op. 181-036. While we believe that most library employees would not come within this definition, a determination of whether a particular employee falls within the exception would depend upon that employee's specific duties and should be judged on a case-by-case basis. If the employee's position is other than one to "primarily impart knowledge to the students," Section 5 would prevent a state university library employee from serving as a legislator as long as he or she held that position with the university.

You have also asked at what point the university employee would be required to resign in order to serve in the legislature. Section 5 provides that no member of the legislature may be employed by the State of Arizona "during the term for which he shall have been elected or appointed." (emphasis added). Since terms of members of the legislature

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begin on the first Monday of January in odd-numbered years, the university employee would be required to resign prior to that date in order to serve in the legislature. See Ariz.Const., Art. IV, Part 2, § 21.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Corbin".

BOB CORBIN
Attorney General

BC/VBW/pd